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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/576,546 05/22/00 LEZER

N 05725.0588-0

EXAMINER

HM12/0803

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TRANS

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

08/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/576,546**

Applicant(s)

Lezer

Examiner

**Susan Tran**

Art Unit

**1615**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 25, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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### **DETAILED ACTION**

Receipt is acknowledged of applicants Declaration and Fee filed 09/22/00, Information Disclosure Statement filed 05/22/00, Response to Election filed 12/21/00, Request for Extension of Time filed 06/25/01, Amendment A filed 06/25/01.

#### ***Response to Arguments***

1. Applicant's arguments filed 06/25/01 have been fully considered but they are not persuasive. The examiner maintains the original rejections for the following reasons:

Claims 1, 4-7, 15-18, 20, 23, 24, and 26-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Arraudeau et al. US 4,659,562 ('562).

Applicant argues that Arraudeau does not teach an anhydrous care or make-up composition comprising fibers, wherein said fibers are compatibilized with a fatty phase by at least one polyol. Instead, Arraudeau discloses an anhydrous composition, or product containing a fatty body and optionally one or more organic solvent. However, claims prior to issue are permitted to be given their broadest reasonable interpretation. It is the position of the examiner that "compatibilized" is to establish a stable formulation without reacting chemically or interfering with others. Arraudeau teaches an anhydrous cosmetic composition comprises fiber having length greater than it's diameter (column 1, lines 11-62), propylene glycol dicaprylate, glycerol, and oils (column 2, lines 40 through column 3, lines 1-9; and examples 1, 2, 7, 8, 12,

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13) that provides a very satisfactory cosmetic composition. Accordingly, Arraudeau's fiber and polyol are compatible to one another to form a stable formulation.

The applicant argues that Arraudeau fails to disclose a method of improving the staying power over time and/or gloss of an anhydrous care or make-up composition. Contrary to the applicant's argument, Arraudeau teaches an anhydrous make-up composition that do not require consequently new or repeated applications (column 1, lines 33-36), and lipsticks that assure a long lasting sharp outline of the lips (column 7, lines 54-56). Thus, Arraudeau does recognize the long lasting properties of a cosmetic composition desired by the applicant.

Claims 1, 4-7, 14-18, 20, 23, 24, and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Franzke et al. US 5,965,146 ('146).

Applicant argues that Franzke does not teach an anhydrous cosmetic composition. The term "anhydrous composition" is defined in applicant's specification at page 5 as being "a composition comprising a homogeneous continuous fatty phase in which may be dispersed ingredients that are insoluble in the fatty phase, in the absence of surfactant or emulsifier, such as dyestuffs and cosmetic or dermatological active agents, including water. In particular, the water will be present in a content of not more than 6% relative to the total weight of the composition". Applicant's specification at page 15, further discloses the composition of the invention can also comprise any ingredients, such as dyestuffs, e.g., pigments; cosmetic or dermatological active agents, such as emollients, moisturizers, e.g., water. Franzke at column 3, lines 52-58 discloses

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water, wetting agents, or emulsifier agents in an amount of from 0.1 to 30% by weight, which clearly falls within the water content defines in the applicant's specification.

Applicant argues that Franzke does not teaches a cosmetic composition comprises a homogenous continuous fatty phase, but a composition comprises ethanol. Contrary to the applicant's argument, Franzke teaches a cosmetic composition comprising polyamide fiber having diameter of 8 to 70  $\mu\text{m}$ , length between 20 to 2000  $\mu\text{m}$  (column 1, lines 56 through column 2, lines 1-67; and example 18), glycols, silicone oil, and polymers (column 3, lines 1-36). Hence, Franzke does teach an anhydrous cosmetic composition comprising fiber and polyol. Applicant's generic claims do not exclude the present of alcohols.

Applicant argues that Franzke's examples discloses aqueous or ethanol base composition but not a homogenous continuous fatty phase. Franzke is relied upon for the teaching within the four walls patent. Franzke cannot be limited to his best mode as described in the examples.

Applicant argues that Franzke does not teach the limitations of claims 15-17. However, applicant has not establish the criticality of the particular L/D to provide any unusual and/or unexpected results over the applied prior arts.

Claims 2, 3, 14-22, and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arraudeau et al. ('562), in view of Bara et al. US 6,177,091 B1 and Arnaud FR 2786393A1 (Abstract).

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Applicant argues that Bara does not teach or suggest an anhydrous care or make-up composition comprising fibers, wherein said fibers are compatibilized with a fatty phase by at least one polyol. However, Bara is relied upon solely for the teaching of the parleam oil. Furthermore, Bara does teach a homogeneous and stable anhydrous composition comprising fiber in fatty phase (column 2 and columns 5-6).

Applicant argues that Arnaud does not teach or suggest an anhydrous care or make-up composition comprising fibers, wherein said fibers are compatibilized with a fatty phase by at least one polyol. However, Arnaud is relied upon solely for the teaching of the IOB value in an anhydrous cosmetic composition. Thus, it would have been obvious for one of the ordinary skill in the art to modify Arraudeau's cosmetic composition using parleam oil in view of the teaching of Bara, and polyol having IOB value of 1-7 in view of the teaching of Arnaud. The reason for this modification is to obtain a homogeneous anhydrous cosmetic composition that prevents unaesthetic folds or migration of the makeup, and thus, provides long lasting property on skin or lips.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

  
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SUPERVISORY PATENT EXAMINER  
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